

ORIGINAL

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, individually and as the  
Representative and Administratrix of  
the Estate of TOMMY HALL, deceased,  
her husband,

Plaintiff,

vs.

CUNA MUTUAL GROUP; CUNA  
MUTUAL INSURANCE SOCIETY,

Defendants.

CIVIL ACTION - LAW

1:01-CV-1265

JUDGE CHRISTOPHER CONNER

FILED  
HARRISBURG, PA

DEC 04 2002

MARY E. D'ANDREA, CLERK

Per

PLAINTIFF'S REPLY BRIEF IN SUPPORT  
OF ITS MOTION IN LIMINE

Plaintiff, by and through undersigned counsel, has submitted a Motion in Limine seeking to: 1) Preclude any testimony concerning or evidence submitted to the jury with respect to the April 30, 1998 entry which states, "CA mole removed...96"; 2) Preclude CUNA's handwriting expert, Mr. Gencavage, from testifying in that his entire report is based on the erroneous entry mentioned above; and 3) Sanction CUNA Mutual for its failure to comply with a Court Order requiring full and complete responses to Plaintiff's Second Request for Production of Documents, numbers 4 through 18.

**I. THE APRIL 30, 1998 ENTRY IS ERRONEOUS AND NOT SUPPORTED BY ANY MEDICAL EVIDENCE IN THIS CASE**

Mr. and Mrs. Hall attended a doctor's visit with Dr. Charlesworth on April 30, 1998. A medical intake sheet was generated. Mr. and Mrs. Hall then met with Dr. Charlesworth. Dr. Charlesworth, in his sworn deposition, testified concerning the erroneous entry concerning the prior mole which had been removed. Dr. Charlesworth testified as follows:

Q. "They had no idea as to the type of cancer?"

A. "Yeah. And at the time, there was a debate between the two of them whether it was really cancer or not."

Q. "What did that...do you recall the specifics of what they actually said about that?"

A. "Well, let me see what I have written. But I remember that there was a debate between the patient and his wife as to whether it was really cancerous or if it was just a funny looking mole. You know, one of them said, No, it was just a funny looking mole. The other said, No, I think it was a cancer. I don't know what kind of cancer it was. They said, I don't know. It really wasn't cancer. That's why they don't know. I mean, there was this discussion back and forth between the two of them."  
(Deposition, pg. 26. See, relevant pages of Dr. Charlesworth's deposition, attached as Exhibit A.).

Dr. Charlesworth further testified, "I do clearly remember that there was a debate between the two of them, number 1, whether it was cancer or not. And, definitely, nobody had any idea what type, if it was. And so that is why I definitely recall requesting records to find out was it cancer and what type was it." (See, Deposition, pg. 27). And finally, Dr. Charlesworth was asked:

Q. "Has anyone up until this date, including Mr. Kelly (CUNA Mutual's counsel) here today ever showed you any document from any other physician that indicates that Mr. Hall had been diagnosed with cancer prior to the 1999 events attendant to the lump in his neck?"

A. **"I have never seen a pathology report that shows that."**  
(See, Charlesworth deposition, pg. 51).

Dr. Ansfield, CUNA's own Medical Director, has agreed with Dr. Charlesworth's conclusions. Dr. Ansfield testified as follows:

Q. "Let me ask the question again. Is there anything from the 93 medical records with the surgical procedure of the removal of the mole that indicates that any form of cancer was developing in Mr. Hall?"

A. "No, there is not."

Q. "Now, are you saying you would have expected Mr. Hall to make his own diagnosis of cancer upon the discovery of a lump in his neck?"

A. "I don't think that that would be possible for a lay person to make the determination as to what the lump was."

Q. "You don't have any records, do you, or any information to establish that Mr. Hall knew he had cancer on November 18, 1998, do you?" (Application date was November 18, 1998)

A. **"No, I do not."**

Q. "Let me rephrase the question to address the objection. Do you have any information that on November 18, 1998, Mr. Hall knew he had cancer?"

A. "No."

Q. "So, at the time the application was made, you have no information that Mr. Hall himself knew he had cancer in 1993?"  
Is that correct?"

A. "I had no information."

Q. "And the pathology report had a finding of dysplastic nevus?"

A. "That is correct."

Q. "And no finding of cancer or melanoma? Is that correct?"

A. "That is correct."

Q. "Are you aware whether or not melanoma and cancers of all types and forms can be present and undiagnosed?"

A. "Certainly, they can be undiagnosed."

Q. "Present and unobserved?"

A. "That is correct." (See, Exhibit C in Plaintiff's original Motion in Limine)

Defendants in this case are attempting to rely upon a medical entry dated April 30, 1998 for which there is no medical support, no medical documentation, and no witness who will testify concerning its accuracy. To the contrary, witnesses will testify concerning its inaccuracy.

Accordingly, CUNA Mutual will attempt to contradict their own Medical Director, the treating doctor who generated the records in question, and their own insured, through testimony concerning an erroneous entry which states "cancerous mole removed." In that all parties and all counsel are aware that no diagnosis had been made of a cancerous mole prior to the date of the insurance application, and that no witness will take the stand, and no witness has been identified by CUNA who will testify that a cancerous mole had been removed prior to the application, the introduction of this information is only intended to mislead the jury on a false premise that Mr. Hall was aware of a prior cancerous mole.

**II. CUNA'S HANDWRITING EXPERT, DR. GENCAVAGE, SHOULD BE PRECLUDED IN THAT HIS REPORT IS BASED ENTIRELY UPON THE ERRONEOUS ENTRY REFERENCE IN SECTION I.**

CUNA Mutual hired a handwriting expert, John Gencavage, to examine the entry which CUNA knew to be erroneous. CUNA was aware of the erroneous entry based upon their own Medical Director's testimony, as indicated previously, and the deposition of the treating doctor who met with Mr. and Mrs. Hall after the erroneous entry found its way into the medical records. Both CUNA Mutual's Medical Director and the treating doctor have testified that there was no history of a prior cancerous mole.

However, despite this knowledge and information, CUNA is persisting with attempts to introduce an erroneous medical entry through a handwriting expert. Based upon Mr. Gencavage's report, it is anticipated that he will offer testimony that the erroneous entry, "cancerous mole removed" was in Mr. Hall's handwriting. However, as was previously discussed, there is no medical evidence in this case, nor any witness who will testify that the entry was in fact correct. Rather, all witnesses will testify that the entry was erroneous. A speculative report based upon a false premise that there was an erroneous mole removed in 1996 should not, and can not, be introduced to the jury when all parties know the entry to be false.

Furthermore, the issue before the jury is not what Mr. and Mrs. Hall thought concerning any prior moles, but rather, according to the application itself, whether Mr. Hall had been treated or diagnosed with cancer prior to the application, not whether he suspected that he may have cancer. (See, application attached hereto as Exhibit B).

Furthermore, any proposed testimony from Mr. Gencavage should be precluded in that Mr. Gencavage's report does not meet the required level of certainty in all cases involving expert

testimony in Pennsylvania. In diversity cases, Federal Courts apply State rules with respect to the degree of certainty required of an expert's opinion. Heller vs. Shaul Industries, Inc., 167 F.3d 146, 153 (3d Cir. 1999). To be admissible in Pennsylvania, any proposed opinion testimony of an expert must be rendered within a reasonable degree of certainty, Montgomery vs. South Philadelphia Med. Group, Inc., 656 A2d, 1385, 1390 (Pa. Supp. 1995).

Although expert testimony need not express the exact language of "reasonable degree of certainty", the opinion must be expressed at least to that degree of certainty. Pennsylvania courts have concluded that expert testimony need not be to absolute certainty, but that any testimony less than the required level of "reasonable degree of certainty" is inadmissibly speculative. Argust vs. Dick Mackey Gen. Contracting Company, Inc., 568 A2d 255, 258 (Pa. Supp. 1990).

Mr. Gencavage's report does not meet any of the required Pennsylvania standards. No where in his report does he detail any degree of certainty whatsoever. The report, contained within a page and a half, simply offers Mr. Gencavage's opinion that Mr. Hall, the decedent, made the April 30, 1998 entry. A report that states no degree of certainty, but is merely Mr. Gencavage's personal opinion, does not meet the muster required under Pennsylvania law. Accordingly, his report should be stricken both because it is based upon an erroneous medical entry, and it does not meet the degree of certainty requirement for all reports within Pennsylvania.

**III. CUNA MUTUAL HAS VIOLATED AND CONTINUES TO VIOLATE THE COURT'S APRIL 19, 2002 ORDER SPECIFICALLY REQUIRING THEM TO RESPOND TO PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS, # 4 through #18.**

The Court, on April 19, 2002, ordered CUNA Mutual specifically to respond to Plaintiff's Second Request for Production of Documents #4 through #18. CUNA has ignored that Court Order. The arguments which CUNA now makes are all arguments and discussions which, if at all, should have taken place during the Court's phone conference prior to the April 19, 2002 Order. CUNA is simply attempting to rehash what was or could have been argued prior to the April 19, 2002 Order. However, the Court's Order is clear, that CUNA Mutual was to fully and completely respond to Plaintiff's Second Request for Production of Documents #4 through #18.

All arguments currently raised by CUNA Mutual to justify their refusal to comply with the April 19, 2002 Order are attempts, simply, to misdirect the inquiry. CUNA Mutual has referred to a March 7, 2002 Order relating to who would be deposed, but not which documents would be required to be produced. CUNA Mutual refers to a March 14, 2002 deposition of Rich Fischer and a subsequent March 28, 2002 follow-up deposition, both of which occurred prior to the Court's April 19, 2002 Order. Neither of those depositions, in any way, affected CUNA's requirement to comply with the April 19, 2002 Order and provide full and complete documentary discovery responses.

It is indeed surprising that CUNA Mutual would bring before the Court's pervue their own conduct during the March 14, 2002 Rich Fischer deposition. That deposition was taking place as a result of a Court Order that CUNA produce an expert concerning profits and losses of CUNA Mutual. CUNA Mutual produced Rich Fischer for his deposition on March 14, 2002 in

Madison, Wisconsin. Plaintiffs, at significant expense, flew out to Madison, Wisconsin, hired a court reporter, and incurred hotel and air expenses. Mr. Fischer arrived at the deposition without a single document and unable to answer any of the statistical questions. A copy of the Rich Fischer deposition is attached hereto as Exhibit C. The following is an illustrative excerpt of his testimony:

Q. "Did you understand that, furthermore, there was a Court Order requiring CUNA Mutual to produce an individual knowledgeable with statistical data concerning CUNA Mutual and you have been designated"?

A. "Yes." (Page #4)

Q. "Did you have an understanding that the Notice of Deposition required you to bring certain documents with you today?"

A. "I saw that this morning and my attorney...I wasn't instructed to by our side of the attorneys."

Q. "You weren't instructed to bring any documents with you today?"

A. "No." (Page #5)

Q. "What were the total assets of CUNA Mutual Group in 2001?"

A. "I don't know that."

Q. "What were the surplus capital funds of CUNA Mutual Group in 2001?"

A. "I don't know that."

Q. "What were the net premiums written for CUNA Mutual Group in 2001?"

A. "I don't know that."



Q. "What was the net investment income of CUNA Mutual Group in 2001?"

A. "I don't know that."

Q. "What was the net income of CUNA Mutual Group in 2002?"

A. "I don't know that."

Q. "Do you know any of the information for 1998?"

A. "Not by memory."

Q. "Do you know any of it from 1999?"

A. "Not by memory."

Q. "Do you know any of it from 2000?"

A. "No."

Q. "On CUNA Mutual Group's balance sheet, what were the assets listed on life and annuity premiums due?"

A. "I don't know." (Pages 11 and 12)

For the next twenty pages of the deposition Rich Fischer continued to provide the answer that he didn't know to any of the statistical questions asked. On Page #19 of his deposition, he said that the records necessary to answer the questions were within CUNA Mutual Insurance Society and maybe were on his desk. On Page #33 of his deposition he was asked:

Q. "I don't want to put words in your mouth. How long would it take you to get the core statistical information?"

A. "To know premiums and claims paid for a policy year, it would take a couple of minutes."

Q. "And that could be in a printed-out form or would it be in a printed-out form or on a disc? What is the form it would take?"

A. "It is in a printed form."

Q. "Well, its already printed?"

A. "It is printed, yeah."

Q. "How often is the core statistical information printed out?"

A. "Monthly. And that is premium and paid claims. It is all that report shows. Well, and number of certificates active, I believe, is on that report."

At that point, after finding out that Mr. Fischer had available all statistical data and either chose not to bring it to the deposition or was instructed by his counsel not to bring it to the deposition, Plaintiff's counsel advised CUNA that either CUNA would face a sanction from the Court or Plaintiff's counsel would agree to reconvene the deposition within two weeks and Mr. Fischer would provide documents and be fully prepared to address a range of categories of questions. (See deposition transcript, pages 35 -36). Just as it was astounding that Mr. Fischer had come to a court-ordered deposition with no documents and no ability to answer any statistical questions, it remains equally astounding that, because of Plaintiff's agreement not to file a Motion for Sanctions at that time with respect to the deposition, but rather allow the deposition to be reconvened two weeks later, CUNA Mutual is now using the agreement reached during that deposition, to justify its refusal to answer Plaintiff's Request for Production of Documents in the face of a Court Order to do so. The Court Order was entered and argued after the Rich Fischer deposition.

In response to Plaintiff's requests #4 through #18, and the Court's Order, CUNA Mutual provided a single document, a redacted organizational chart of a small sector of their business.

CUNA's explanation that they believe they have complied with the request is astounding, to say the least. The following time line illustrates Plaintiff's efforts to obtain the full and complete responses ordered by the Court:

May 7, 2002 Letter from Plaintiff's counsel to CUNA - "I await full and complete responses to Plaintiff's Second Request for Production of Documents #4 through #18...I believe you have provided partial answers to many of the questions, but await full and complete answers as instructed by the Court. Please let me know when you will have these answers available. I hope this can be provided to us within the next 10 days or no later than May 22, 2002, so that your responses may be reviewed and analyzed prior to the date upon which my expert reports are due." (Attached hereto as Exhibit D)

September 12, 2002 Letter from Plaintiff's counsel to CUNA - "I received your letter with all of its explanations, however, it does not provide justification for violating the Court Order which required that all of the documents be produced...I am once again requesting full compliance with the Court Order that you produce all documents identified in Plaintiff's Second Request for Production of Documents #4 through #18." (Attached hereto as Exhibit E)

September 17, 2002 Letter from CUNA Mutual - "We request that you provide us with a detailed statement of exactly what information you are requesting." (Attached hereto as Exhibit F)

September 18, 2002 Letter from Plaintiff's counsel to CUNA - "I am in receipt of your letter dated September 17, 2002 in which you reaffirm that you will be providing no further responses to questions #4 through #18 of Plaintiff's Second Request for Production of Documents, despite the Court Order to do so. Despite oral argument and in order that CUNA Mutual provide full and complete responses to question #4 through #18, you requested a detailed statement of what information is being requested. A detailed statement is found in the Request for Production itself which you are required to not respond by objection, but respond by providing the documents." (Attached hereto as Exhibit G)

Plaintiff's September 18, 2002 detailed letter then sets forth, in detail, the numerous violations. The following chart, derived from the specific requests details CUNA's flagrant violation of the Court Order:

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<u>Req #</u>	<u>Document Requested</u>	<u>CUNA's response</u>
#4	All documents to and from the credit union in Chambersburg, PA and CUNA Mutual with respect to home life insurance, including, but not limited to, contracts, agreements, memoranda and documents.	New objection
#5	Copies of all contested claims within CUNA Mutual within the home life insurance area for the past 3 years, including the entire claims file for those contested claims.	New objection
#6	CUNA Mutual organizational chart which shows the name, title, and position of each of the employees and supervisors within the home life insurance area of CUNA Mutual.	New objection
#7	CUNA Mutual organizational chart which shows the name, title, and position of each of the employees and supervisors within the credit life insurance area of CUNA Mutual.	New objection
#8	CUNA Mutual organizational chart which shows the relationships and reporting responsibilities and chain of command with respect to the overlap between home life and credit life.	New objection
#10	Internal profit and loss calculations and statements with respect to credit life for the years 1998-2001	New objection. [Profit and loss sheet generated for this case only, without providing the source materials and the actual accounting documents.]
#11	Internal profit and loss calculations and statements with respect to home mortgage insurance for the years 1998-2001	New objection. [A sheet specifically prepared for this case, with no internal company profit and loss supporting documents from which the numbers were derived.]

#13	Within the home mortgage protection area, the statistical data showing the claims submitted, claims paid, the amount of payment, the amount contested, claims ultimately paid in the contest process, claims not paid, claims in process, the face amount of each policy, and the number of claims	New objection. [Some documents were provided but not within the categories specifically requested. The documents provided were those generated for purposes of this litigation and were not those internal documents within the company which could be used to check CUNA's calculations and reporting for purposes of this case.]
#15	Annual policy report statements for public dissemination	New objection
#16	Annual policy report statements for public dissemination generated for Wisconsin	New objection
#17	A copy of all forms of individual insurance applications used in November, 1998 in the State of PA by CUNA	A single application was provided but not all various forms as requested

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Despite Plaintiff's numerous requests and detailed letter as described above, CUNA has thumbed its nose at Plaintiff's Request and the April 19, 2002 Court Order. After all the requests and efforts that Plaintiff made to obtain these documents prior to the Production of Reports and prior to the Motions for Partial Summary Judgment which are pending, CUNA simply responded with a blanket statements in its September 19, 2002 letter, which states, in essence, that Plaintiffs are in possession of all the documents which CUNA sees fit to release.

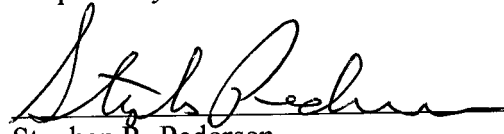
Such cavalier refusal to comply with a Court Order and refusal to provide discovery documents, can only be met with an equally proportionate response from the Court. By the nature of type of requests, it is clear that many of these requests were needed to further detail information in Plaintiff's Expert Reports which go to both CUNA Mutual's liability and the punitive nature of their conduct. After having failed to provide Plaintiff with the requested documents and refusing to comply with the Court Order, CUNA Mutual then filed a Motion for

Partial Summary Judgment asserting that Plaintiffs did not have enough information and evidence to pursue a punitive damage claim. However, CUNA Mutual has concealed many of the very documents which would likely assist the Plaintiff in pursuing such a claim. For example, the claims file of other insureds would have been instrumental in developing a pattern of prior conduct. CUNA Mutual refused to provide these documents despite a Court Order to do so. Additionally, CUNA Mutual provided many documents which were generated simply for the purpose of this case, without providing the supporting statistical data and supporting internal documents. This leaves Plaintiffs without the ability to effectively prepare for trial, more effective impeachment, and cross examination concerning the statistical data in this case.

#### IV. CONCLUSION

For all of these reasons, Plaintiff requests that the anticipated testimony or submission of evidence concerning the April 30, 1998 erroneous medical entry be disallowed. Plaintiff further requests that CUNA's handwriting expert, Mr. Gencavage, be precluded from testifying in light of the fact that his entire testimony is based upon an erroneous entry and his report does not meet evidentiary muster concerning the degree of certainty in which his report is expressed. Finally, Plaintiff requests that the Court sanction CUNA Mutual for its blatant refusal to comply with the Court's April 19, 2002 Order requiring full and complete responses to Plaintiff's Request for Production of Documents #4 through #18.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen R. Pedersen", written over a horizontal line.

Stephen R. Pedersen  
214 Senate Ave., Suite 602  
Camp Hill, PA 17011  
(717) 763-1170

I. D. No 72026  
Counsel for Plaintiff

DATE: 12/4/02

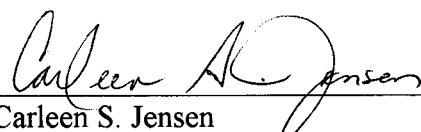
**CERTIFICATE OF SERVICE**

And now, this 4<sup>th</sup> day of Dec., 2002, I, Carleen S. Jensen, do hereby certify that I have, this date, served a true and correct copy of the within **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF ITS MOTION IN LIMINE** upon each of the attorneys of record at the following address(es) by sending same in the United States mail:

Michael R. Kelley, Esq.  
Charles T. Young  
100 Pine Street  
P O Box 1166  
Harrisburg, PA 17108-1166

Catherine Mahady-Smith, Esq.  
3115-A N. Front Street  
Harrisburg, PA 17110

DATE: 12-4-02

  
Carleen S. Jensen  
Assistant to Stephen R. Pedersen, Esquire  
214 Senate Avenue, Suite 602  
Camp Hill, PA 17011  
(717) 763-1170

I. D. No. 72026  
Counsel for Plaintiff



EXHIBIT A

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NANCY HALL, INDIVIDUALLY AND : CIVIL ACTION - LAW  
AS THE REPRESENTATIVE AND :  
ADMINISTRATRIX OF THE ESTATE :  
OF TOMMY HALL, DECEASED, HER :  
HUSBAND, :  
PLAINTIFF :  
V : 1:01-CV-1265  
CUNA MUTUAL GROUP, CUNA :  
MUTUAL INSURANCE SOCIETY, :  
DEFENDANTS : JUDGE SYLVIA H. RAMBO

DEPOSITION OF: ERNEST E. CHARLESWORTH, M.D.

TAKEN BY: DEFENDANTS

BEFORE: PAMELA S. SULLIVAN,  
REPORTER-NOTARY PUBLIC

DATE: JANUARY 9, 2002, 10:05 A.M.

PLACE: FAIRWAY MEDICAL ASSOCIATES  
144 SOUTH 8TH STREET  
CHAMBERSBURG, PENNSYLVANIA

APPEARANCES:

McNEES WALLACE & NURICK, LLC  
BY: MICHAEL R. KELLEY, ESQUIRE

FOR - DEFENDANTS

PEDERSEN & PEDERSEN  
BY: CATHERINE M. MAHADY-SMITH, ESQUIRE  
STEPHEN R. PEDERSEN, ESQUIRE

FOR - PLAINTIFF

**HAE**  
Reporting Service, Inc.  
Hughes  
Albright  
Foltz  
Natale

1           When Tommy presented, he and his wife, this was  
2   on the note, you know, on the face sheet, cancerous mole.  
3   And I said, Well, what kind of cancer? Was it basal cell?  
4   squamous cell? melanoma? It makes a huge difference in what  
5   to expect and what I should be doing as far as monitoring  
6   him for follow-up. And they had no idea. You know, they --

7           Q     They had no idea as to the type of cancer?

8           A     Yeah. And at the time, there was debate between  
9   the two of them whether it was really cancer or not.

10          Q     What did that -- do you recall the specifics of  
11   what they actually said about that?

12          A     Well, let me see what I have written. But I  
13   remember that there was a debate between the patient and his  
14   wife as to whether it was really cancerous or if it was just  
15   a funny-looking mole. You know, one of them said, No, it  
16   was just a funny-looking mole. The other one said, No, I  
17   think it was cancer. I don't know what kind of cancer it  
18   was. They said, I don't know. It really wasn't cancer  
19   that's why they don't know.

20                I mean, there was this discussion back and forth  
21   between the two of them.

22          Q     Can we -- I'm sorry, Doctor. Before you move on  
23   beyond that I wanted to ask you, do you recall whether it  
24   was Mr. Hall or Mrs. Hall who was saying, I think it was  
25   cancer, and which one was saying, no, I think it was just a

1 funny-looking mole?

2 A Let me see if I have anything written, and I'll  
3 tell you. Okay?

4 Q Sure.

5 A I don't have it specified here in my written  
6 records or written notes who said what. But in my mind what  
7 sticks out is that Tommy is the one that's saying it was a  
8 funny mole and his wife is the one who was saying it was  
9 cancer. But I don't have a written note to corroborate  
10 that, but that's the way it plays out.

11 I do clearly remember that there was debate  
12 between the two of them, number one, whether it was cancer  
13 or not. And definitely nobody had any idea what type if it  
14 was. And so that's why I definitely recall requesting  
15 records to find out was it cancer and what type was it.

16 Q If you would, Doctor, turn to the next -- I'm  
17 sorry. I'm not sure if those things are still in there.  
18 Yes, they are.

19 MR. KELLEY: Let's mark this next page then as  
20 Charlesworth 2.

21 (Physician progress notes, one page, produced and  
22 marked Charlesworth Exhibit No. 2.)

23 BY MR. KELLEY:

24 Q Doctor, we've marked as Charlesworth 2 a document  
25 that says at the top right, Physician Progress Notes. Do

1 removed or not.

2 Q Well, let me ask you this: Does it appear that  
3 the physician in that case was Dr. Hurley? Do you know Dr.  
4 Hurley?

5 A Yes, I know Dr. Hurley.

6 Q Under doctor. Here, under doctor.

7 A Yes, I'm sorry. That's what I was looking for,  
8 the doctor that sent the specimen. And that was Dr. Hurley.  
9 That's correct.

10 Q Do you recall whether or not he was partners with  
11 Dr. Guthrie?

12 A Oh, yes, definitely.

13 Q Is it fair to say, Doctor, that you would have  
14 not rendered treatment or recorded as the diagnosis melanoma  
15 or cancer without first seeing this pathology report  
16 yourself?

17 A If I saw this pathology report, I would not  
18 record a diagnosis of cancer.

19 Q Has anyone up until this date, including Mr.  
20 Kelley here today, ever showed you any document from any  
21 other physician that indicates that Mr. Hall had been  
22 diagnosed with cancer prior to the 1999 events attendant to  
23 the lump in his neck?

24 A I've never seen a pathology report that shows  
25 that.

EXHIBIT B

**MEMBERS HOME MORTGAGE PROTECTION II APPLICATION**  
**GROUP MORTGAGE INSURANCE**

PLEASE PRINT

32534

CERTIFICATE NO.

<b>(A)</b> Name <u>Tommy Don Hall Jr</u> Borrower #1		Name <u>NANCY M. HALL</u> Borrower #2 (Must be an individual who is jointly responsible for the loan)	
Address <u>517 Mt. Pleasant Rd</u>		Address <u>517 Mt. Pleasant Rd</u>	
Fayetteville, PA 17222		Fayetteville, Pa. 17222	
Home Phone: <u>(717) 352-9030</u>		Home Phone: <u>(717) 352-9030</u>	
Social Security # <u>563-82-5959</u>		Social Security # <u>203-44-1196</u>	
Date of Birth <u>5-12-55</u> Age <u>43</u> Sex <u>M</u>		Date of Birth <u>5-28-53</u> Age <u>45</u> Sex <u>F</u>	
Height <u>5'6"</u> Weight <u>200</u>		Height <u>5'3"</u> Weight <u>165</u>	
Occupation <u>TRUCK DRIVER</u>		Occupation <u>HOUSEWIFE</u>	

**Borrower #1** **Borrower #2**

**(B)** Yes No Yes No

☐ ☒ ☐ ☒ 1. Have you ever been treated for or diagnosed by a member of the medical profession as having any of the following (Please check the box and circle condition(s) that applies)

Diabetes; high blood pressure; chest pain; heart, blood, blood vessel, lung or breathing disorders; cancer; epilepsy; stroke; pneumonia(s); arthritis, brain, mental, nervous, back, neck, joint or muscular disorders; stomach, intestines, liver, pancreas, or kidney disorders; cirrhosis, drug or alcohol abuse, acquired immune deficiency syndrome or AIDS related complex, or tested positive for antibodies to the AIDS virus? (NOTE TO RESIDENTS OF ME, ND, VT AND WI: You do not have to disclose positive test results for the antibodies to the AIDS Virus)

☐ ☒ ☐ ☒ 2. During the past 3 years, have you for any reason been hospitalized?

☐ ☒ ☐ ☒ 3. Have you used tobacco in any form within the past 24 months?

☒ ☐ ☐ ☒ If Disability Coverage is Requested—

4. Are you now gainfully employed on a full-time basis and presently working 25 hours a week or more? PA.

Name and Address of Family Physician Dr. Ernest Charlesworth 144 S. 5th St. Chambersburg, 17201

## GIVE FULL DETAILS BELOW FOR ANY HEALTH PROBLEM INDICATED IN THIS SECTION.

Name of Person	Name & Address of Physician	Nature of Condition	Dates & Duration

**(C) LIFE COVERAGE:** ☒ Single ☐ Joint

1. Amount of Insurance Requested 56,000.00 (four loan balance, up to \$250,000)

2. Life Insurance Charge 11.18 (refer to rate table)

**DISABILITY COVERAGE:** ☐ Single ☐ Joint ☒ No Coverage

1. Amount of Insurance Benefit Requested 56,000.00 (four monthly payment, up to \$1,000 for single and \$1,500 for joint coverage)

2. Disability Insurance Charge 11.18 (refer to rate table)

NOTE: You must apply and be approved for LIFE to be eligible for DISABILITY coverage. If you select Joint Disability, coverage and benefits will be split equally between Borrower #1 and #2. If the insurance you applied for is approved, it will become effective on the date of approval or, if later, the effective date of the loan as shown on this Application.

**(D) CONSUMER PROTECTIVE AUTHORIZATION****Consumer Authorization Form**

These answers are true and complete to the best of my knowledge and belief. To determine my insurability, or for claims purposes, I authorize any medical practitioner or institution, insurance company or the Medical Information Bureau, Inc., Consumer Reporting Agency, or employer to give any information about my physical or mental health condition, treatment, or any non-medical information to CUNA Mutual Insurance Society, or its reinsurer. I agree that this authorization shall be valid for 30 months from the application date. I have read the Consumer Privacy Notice pertaining to the Medical Information Bureau as required by the Fair Credit Reporting Act. The Society shall incur no liability until this application is approved by the Society and the first premium paid.

By signing this application, I acknowledge that I understand that this policy contains a war exclusion. Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insured, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

I authorize my financial institution to pay my insurance premiums as indicated above to CUNA Mutual Insurance Society by Electronic Funds Transfer from my credit union account or collect these premiums with my regular loan payment, according to my financial institution's discretion. As my financial institution you will be fully protected by honoring these payments until you receive written notice from me cancelling this request.

Tommy Don Hall Jr 11-18-98 Nancy M. Hall 11-18-98

SIGNATURE OF BORROWER #1 DATE SIGNATURE OF BORROWER #2 DATE

**(E) TO BE COMPLETED BY LENDER OR SERVICING FIRM**

Mortgageholder's Name Patrick Federal Credit Union

Contract No. 037-1485-6

Member Account No. 67-103537220

Original Loan Term 360 mos.

Months To Run 360

Loan Balance After 55951.79

Date Last Payment Was Made JAN 1 1999

Monthly Principal And Interest 284.24

Total Monthly Mortgage Payment 284.24

APR 6.75

Loan Effective Date JAN 1 1999 (closed NOV 18, 98)

Is this application to replace or amend an existing Group Mortgage Insurance Certificate? ☒ YES ☐ NO

834-902-0394

834-900-0987

I/we understand that this insurance is optional and is not a condition or requirement for approval of my/our loan. My monthly premium will be \$ 11.18 x 12 = an estimated annual premium of \$ 134.16.

HMP DEC 01 1998

**CUNA MUTUAL GROUP**  
CUNA Mutual Insurance Society

P.O. Box 391, 5910 Mineral Point Road  
Madison, WI 53701-0391

D0001

**Madison Freelance  
Reporters, LLC**



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

\* \* \* \* \*

NANCY HALL, individually and as the  
Representative and Administratrix of  
the Estate of Tommy Hall, deceased,  
her husband,

Plaintiff,

v.

Law No. 1:01-CV-1265

CUNA MUTUAL GROUP, CUNA MUTUAL  
INSURANCE SOCIETY,

Defendants.

\* \* \* \* \*

DEPOSITION OF RICHARD FISCHER

Thursday, March 14th, 2002

1:20 p.m.

Reported by: Becky J. Gantt, RPR



131 W. Wilson St. • Suite 1000 • Madison, Wisconsin 53703

Phone: (608) 255-8100 Fax: (608) 255-4096

[www.madisonfreelance.com](http://www.madisonfreelance.com)

1 DEPOSITION of RICHARD FISCHER, a witness in the  
2 above-entitled action, taken at the instance of the  
3 plaintiff, under the provisions of Chapter 804 of the  
4 Wisconsin Statutes pursuant to notice, before BECKY J.  
5 GANTT, a Registered Professional Reporter and Notary  
6 Public in and for the State of Wisconsin, at the law  
7 offices of Davis & Kuelthau, S.C., 10 East Doty Street, in  
8 the City of Madison, County of Dane, and State of  
9 Wisconsin, on the 14th day of March, 2002, commencing at  
10 1:20 p.m.

11  
12 \* \* \* \* \*

13 A P P E A R A N C E S

14 MR. STEPHEN R. PEDERSEN,  
15 Attorney at Law,  
16 214 Senate Avenue, Site 602,  
17 Camp Hill, Pennsylvania, 17011-2336,  
18 appearing on behalf of the  
19 plaintiff;

20 MR. MICHAEL R. KELLEY,  
21 McNEES, WALLACE & NURICK,  
22 Attorneys at Law,  
23 100 Pine Street,  
24 P.O. Box 1166,  
25 Harrisburg, Pennsylvania 17108-1166,  
appearing on behalf of the  
defendants.

ALSO PRESENT: Mark Richardson

23 \* \* \* \* \*

\* \* \* \* \*

I N D E X

Examination by:

Page:

Attorney Pedersen  
Attorney Kelley

4

--

\* \* \* \* \*

E X H I B I T S

Exhibit Nos.:

Page:

(No exhibits were marked for identification)

\* \* \* \* \*

(Original transcript filed with Attorney Pedersen)



1 RICHARD FISCHER,  
2 having been first duly sworn on oath,  
3 was examined and testified as follows:  
4

5 EXAMINATION

6 By Mr. Pedersen:

7 Q Mr. Fischer, please state your full name for the  
8 record.

9 A Richard Allen Fischer.

10 Q Mr. Fischer, where are you currently employed?

11 A CUNA Mutual.

12 Q When you say CUNA Mutual, what's the full  
13 designation?

14 A CUNA Mutual Insurance Society.

15 Q Did you understand that you were, a notice was sent  
16 out for your deposition for you to attend this  
17 deposition today?

18 A Yes.

19 Q And did you understand that furthermore that there  
20 was a court order requiring CUNA Mutual to produce an  
21 individual knowledgeable with statistical data  
22 concerning CUNA Mutual and you've been designated?

23 A Yes.

24 Q And did you understand that you were also designated  
25 by CUNA Mutual under court order to address profits

1 and losses --

2 A Yes.

3 Q -- of CUNA Mutual? Did you ever see a copy of the  
4 notice of deposition?

5 A Yes, yes.

6 Q Did you have an understanding that the notice of  
7 deposition required you to bring certain documents  
8 with you today?

9 A I saw that this morning and my attorney -- I wasn't  
10 instructed to by our side of the attorneys.

11 Q You weren't instructed to bring any documents with  
12 you today?

13 A No.

14 MR. KELLEY: Just for the record as  
15 we've mentioned I think in a few of the other  
16 depositions, we have interposed objections to  
17 the request for documents and they were  
18 submitted to opposing counsel. Based upon those  
19 objections, I have not asked the witnesses to  
20 bring any documents with them.

21 By Mr. Pedersen:

22 Q Are you prepared to address from memory statistical  
23 data concerning home mortgage insurance policies,  
24 rescission and denial of policies, amounts paid in  
25 benefits and premiums received?

1 MR. KELLEY: Object to the form of the  
2 question in that counsel has not identified what  
3 he means by statistical data and a full range of  
4 statistical data. The witness may be prepared  
5 to answer some information but not all of the  
6 details of statistical information that counsel  
7 may request.

8 By Mr. Pedersen:

9 Q Did you understand that you would be asked questions  
10 about details of statistical data at this deposition  
11 today?

12 A Yes.

13 Q And are you prepared to address from memory the  
14 statistical data concerning the home mortgage  
15 protection products?

16 A To the extent I have it by knowledge, yes.

17 Q And are you prepared to address from memory, without  
18 reference to any documents, profits and losses in  
19 lines of business including home mortgage protection  
20 and individual life?

21 A No.

22 MR. KELLEY: Objection to the form of  
23 the question because you included information in  
24 there that's beyond the scope of his respective  
25 knowledge.

1 MR. PEDERSEN: And I disagree. This  
2 was specifically the area raised to Judge Rambo,  
3 the inquiry about profits and losses comparing  
4 individual life with group life and credit life  
5 and this is the individual that's been produced  
6 by the company to address those. And now we  
7 find out he's not prepared to address those.

8 MR. KELLEY: Hold on one second,  
9 please. In my March 8th, 2002, facsimile to  
10 opposing counsel, I indicated quote, "The person  
11 at CUNA Mutual Insurance Society most  
12 knowledgeable as to profits and losses and with  
13 statistical data relating to credit insurance is  
14 Rich Fischer.

15 "You have already, you already have  
16 him scheduled for deposition. Fischer may or  
17 may not have time before his deposition to  
18 compile and analyze the information on  
19 statistical data and profits and losses. I want  
20 you to be aware of this fact beforehand." That  
21 is the description of what this witness has, the  
22 designation of this witness to testify in these  
23 proceedings.

24 MR. PEDERSEN: And my understanding of  
25 the oral argument that was made to the Judge and

1 the court order is that the requirement was an  
2 individual be produced knowledgeable to address  
3 and compare profits and losses in at least two  
4 lines of business, credit life and individual  
5 life.

6 MR. KELLEY: The judge's order states,  
7 without reading the whole order, under Item 2,  
8 "Plaintiff's request to depose a designated  
9 representative regarding CUNA's profits and  
10 losses is granted in part and denied in part as  
11 follows: Inquiry may be made of the designated  
12 representative concerning profits and losses  
13 insofar as it is related to plaintiff's theory  
14 regarding the profits of CUNA relative to its  
15 policy of its claims denial and policy  
16 rescission." And it also says that the request  
17 to depose a designated representative regarding  
18 statistical information on the claims denial and  
19 the policy rescission is granted.

20 Now, I can note for the record that  
21 the defendants in this case are CUNA Mutual  
22 Group -- which is an umbrella company. It's not  
23 a legal entity -- and CUNA Mutual Insurance  
24 Society.

25 This witness has been designated to be

1           able to testify consistent with the Court's  
2           order with regard to statistical information in  
3           profits and losses. Since the information was  
4           requested at such a late date, CUNA has not had  
5           time to be able to compile all of the details of  
6           that information and this witness is prepared to  
7           discuss the information regarding CUNA Mutual  
8           Insurance Society to the best of his knowledge  
9           and recollection.

10                   MR. PEDERSEN: I disagree with several  
11           points. One, the late notice and the letters  
12           were exchanged more than a month ago. Two,  
13           there was notice with respect to discovery  
14           requests that went out as to the line of  
15           inquiry. Three, there was a specific oral  
16           argument before the judge in which the line of  
17           inquiry was discussed and the order came in the  
18           context of that argument. And three, or four,  
19           it's surprising, if not shocking, that an  
20           individual would come without a single document  
21           to discuss statistics and profits and losses of  
22           any line of business.

23                   What I suggest we do is proceed and  
24           find out those areas in which he is either not  
25           knowledgeable or does not have documents with

1 him today and then determine whether or not that  
2 in fact complies with the judge's order.

3 MR. KELLEY: Just to comment. It's,  
4 it's not shocking at all that a witness would  
5 show up on, with less than ten days or  
6 approximately ten days notice of his  
7 deposition -- that's when the notice of  
8 deposition was sent out in this case -- with a  
9 request to provide documents that was so broad  
10 as to be meaningless.

11 And it's not surprising the witness  
12 would show up without such statistical  
13 information when counsel has provided formal  
14 request for any documents that's only ten days  
15 old at this point and counsel for plaintiffs who  
16 brought this action in July of 2001 didn't send  
17 out a single request for documents until  
18 February 22nd of 2002. And those answers to  
19 those requests for production of documents are  
20 not even due yet under the Rules of Civil  
21 Procedure.

22 MR. PEDERSEN: I would note for the  
23 record that documents were exchanged at the  
24 inception of the case pursuant to both federal  
25 rule and local rule in which it was represented

1 to us that we had the entire claim file and all  
2 relevant documents to the case. And it was  
3 subsequently that statistical and financial  
4 documents and records have been sought.

5 MR. KELLEY: And just to note for the  
6 record that we produced information pursuant to  
7 Rule 26 of the federal rules. And what Rule 26  
8 requires is different than what Mr. Pedersen  
9 just described. Go ahead.

10 By Mr. Pedersen:

11 Q What were the total assets of CUNA Mutual Group in  
12 2001?

13 A I don't know that.

14 Q What were the capital surplus funds of CUNA Mutual  
15 Group in 2001?

16 A I don't know that.

17 Q What were the net premiums written from CUNA Mutual  
18 Group in 2001?

19 A I don't know that.

20 Q What was the net investment income of CUNA Mutual  
21 Group in 2001?

22 A I don't know that.

23 Q What was the net income of CUNA Mutual Group in 2001?

24 A I don't know that.

25 Q Do you know any of that information for 1998?



1 A Not by memory.

2 Q Do you know any of it from 1999?

3 A Not by memory.

4 Q Do you know any of it from 2000?

5 A No.

6 Q On CUNA Mutual Group's balance sheet, what were the  
7 assets listed on life and annuity premiums due?

8 A I don't know.

9 Q Do you know that for any of those years?

10 A Not by memory.

11 Q What were the liabilities that were listed, the total  
12 liabilities on CUNA Mutual Group's balance sheet as  
13 of December 31st, 2000?

14 A I don't know.

15 Q What were the ordinary life premiums of CUNA Mutual  
16 Group in the year 2001?

17 A I don't know.

18 Q Do you know that for any of the years '98 through  
19 2001?

20 A Not by memory.

21 Q What was the credit life premiums that were paid in  
22 to CUNA Mutual Group in the years 2001 through, in  
23 reverse order, 1998?

24 A I don't know.

25 Q What about with respect to credit life?

1 A I think you just asked credit life.

2 Q Group life, I'm sorry?

3 A I don't know.

4 Q You don't know for any of those years?

5 A Not the exact.

6 Q With respect to CUNA Mutual Insurance Society, what  
7 were the assets, total assets of CUNA Mutual  
8 Insurance Society in 2000?

9 A I don't know.

10 Q In 1999?

11 A I don't know.

12 Q In 1998?

13 A I don't know.

14 Q '97?

15 A I don't know.

16 Q Capital surplus for CUNA Mutual Insurance Society for  
17 those same years?

18 A I don't know.

19 Q Reserve funds for CUNA Mutual Insurance Society for  
20 those same years?

21 A I don't know.

22 Q Net written premiums for CUNA Mutual Society for  
23 those years?

24 A I don't know.

25 Q Net investment income for CUNA Mutual Society for

1           those same years?

2       A     I don't know.

3                       MR. KELLEY: And just let me note for  
4                       the record that CUNA Mutual has a website with  
5                       public information including financial  
6                       statements. I believe the financial statements  
7                       from 1999, 2000 are contained on the website. I  
8                       believe Mr. Pedersen is actually reading from  
9                       that document.

10                      MR. PEDERSEN: No, I am not.

11       By Mr. Pedersen:

12       Q     And you didn't bring even that document with you, did  
13             you? You didn't bring a single piece of paper with  
14             you to address the accuracy of any information that I  
15             might tell you or read to you; is that right?

16       A     That's correct.

17       Q     With respect to premiums and reserves in the year  
18             2000, what were CUNA Mutual Society's ordinary life  
19             premiums?

20       A     I don't know.

21       Q     What were their reserves?

22       A     I don't know.

23       Q     For '99?

24       A     I don't know.

25       Q     '98?

1 A I don't know.

2 Q With respect to group life and credit life, are you  
3 aware of any of that statistical information?

4 A Not on what you're asking.

5 Q You don't know the numbers?

6 A I don't know the exact number.

7 Q You don't have any papers with you today to refer to?

8 A I do not.

9 Q With respect to individual annuities for the years  
10 2000 through '98, are you aware of any of the  
11 numbers?

12 A No.

13 Q Group annuities --

14 A No.

15 Q -- same question? With respect to ordinary life for  
16 1998 through 2000, do you know those numbers?

17 A No.

18 Q Group life, do you know those numbers?

19 A No.

20 Q Credit life?

21 A No.

22 Q With respect to net premiums and deposit of funds  
23 with CUNA Mutual Insurance Society for 1998, are you  
24 aware of any of the specific numbers in these  
25 categories, ordinary life, group life, credit/and

1 credit life?

2 A No.

3 Q 1999?

4 A No.

5 Q 2000?

6 A No.

7 Q With respect to general account reserve distributions  
8 in 1998 for ordinary life, do you know those numbers?

9 A No.

10 Q '99?

11 A No.

12 Q 2000?

13 A No.

14 Q With respect to group life, are you aware of any of  
15 the premium and reserve analysis numbers for '98,  
16 '99, or 2000?

17 A No.

18 Q With respect to credit life, are you aware of any of  
19 those numbers for '98, '99, or 2000?

20 A No.

21 Q With respect to profitability ratios for net benefits  
22 paid, are you aware of the actual profitability ratio  
23 numbers for '98, '99, or 2000 for CUNA Mutual  
24 Insurance Society?

25 A No.

1 Q With respect to commission and expense ratios and  
2 profitability tests, are you aware of those numbers?

3 A No.

4 Q With respect to total assets, total revenues, are you  
5 aware of the profitability numbers for '98, '99, or  
6 2000?

7 A No.

8 Q With respect to return on equity under the  
9 profitability test for '98, '99, or 2000 for CUNA  
10 Mutual Insurance Society, are you aware of those  
11 numbers?

12 A No.

13 Q With respect to net yield, are you aware of the  
14 profitability test numbers for CUNA Mutual Insurance  
15 Society for 1998, '99, or 2000?

16 A Not the exact numbers.

17 Q Are you aware of the total return under profitability  
18 for CUNA Mutual Insurance Society products from '98  
19 through 2000?

20 A No.

21 Q Under the profitability analysis, are you aware of  
22 the ordinary life product profitability analysis for  
23 the year 2000?

24 A No.

25 Q 1999?

1 A No.

2 Q 1998?

3 A No.

4 Q With respect to group life, net operating gains, and  
5 profitability analysis, are you aware of the numbers  
6 for 2000?

7 A No.

8 Q '99?

9 A No.

10 Q '98?

11 A No.

12 Q With respect to credit life, are you aware of the  
13 profitability analysis net operating gain numbers for  
14 2000?

15 A Not the exact numbers.

16 Q 1999?

17 A No.

18 Q 1998?

19 A No.

20 Q Individual annuities within CUNA Mutual Insurance  
21 Society profitability analysis net operating gains  
22 for 2000?

23 A No.

24 MR. KELLEY: Objection. That's beyond  
25 the judge's order. Go ahead. You can answer.

1 A No.

2 By Mr. Pedersen:

3 Q '99?

4 A No.

5 Q '98?

6 MR. KELLEY: Same objection for all  
7 those years.

8 A No.

9 By Mr. Pedersen:

10 Q Are those numbers to all of those questions available  
11 within CUNA Mutual Insurance Society?

12 A Yes.

13 Q They're within records and documents maintained at  
14 CUNA Mutual Insurance Society?

15 A Yes.

16 Q Are you able to access that information?

17 A Yes.

18 Q Where is the information maintained?

19 A I would say our finance department has that  
20 information.

21 Q Would the people in the finance department be in a  
22 better position than you to address those questions?

23 MR. KELLEY: Well, I'm going to  
24 object.

25 Q If you know.



1 MR. KELLEY: I'm going to object to  
2 that in that Mr. Fischer may be the best person  
3 to be able to address those questions, but he  
4 has not had the opportunity to pull all of that  
5 information together. Go ahead, you can answer.

6 A If what you want are the numbers, then someone from  
7 finance can give you the numbers.

8 By Mr. Pedersen:

9 Q And the numbers with respect to investment yields for  
10 the various years, is that finance?

11 A Yes.

12 Q Numbers with respect to liquidity under various  
13 products?

14 A Yes.

15 Q Are you aware of the total assets on the balance  
16 sheet for CUNA Mutual Insurance Society in the year  
17 2000?

18 A Not the exact number.

19 Q For 1999?

20 A No.

21 Q For 1998?

22 A No.

23 Q And are you aware of the breakdown of assets into  
24 various asset categories for CUNA Mutual Insurance  
25 Society?

1 A No.

2 Q With respect to liabilities, are you aware of the  
3 total liabilities as reported for CUNA Mutual  
4 Insurance Society as of December 31st, 2000?

5 A Not the exact number.

6 Q What's the approximate number?

7 A Of the liabilities?

8 Q Yes.

9 A For which line?

10 Q For the overall balance sheet from December 31st,  
11 2000, reporting.

12 A I don't know.

13 Q With respect to assets you said you knew  
14 approximately?

15 A I did not say that.

16 Q Oh, I'm sorry. Do you know approximately the assets  
17 of CUNA Mutual Insurance Society as reported on  
18 December 31st, 2000?

19 A No.

20 Q Is 2.28 billion in the ball park?

21 MR. KELLEY: Object to the form. You  
22 can answer.

23 A I think it is.

24 By Mr. Pedersen:

25 Q With respect to the summary of operations, the

1 operations of each individual, some individual lines  
2 of insurance, are you aware of the premiums collected  
3 in 2000 for ordinary life?

4 A No.

5 Q The individual, I'm sorry, credit life, same  
6 question?

7 A Not the exact number.

8 Q Do you know approximately the number?

9 A The approximate number should be in the 700 million  
10 range.

11 Q That's for credit life?

12 A For -- no. It's not. For credit, for credit life  
13 it's probably in the 300 million range.

14 Q Would it be consistent with your recollection if it  
15 were 238 million, or you think it's more than that?

16 A That could be consistent.

17 Q What about group life?

18 A I don't know.

19 Q And those numbers for 1999, do you know?

20 A No.

21 Q For 1998?

22 A No.

23 Q Are you aware of any of the cash flow numbers or  
24 statistics for CUNA Mutual Insurance Society for  
25 1998?

1 A The exact numbers?

2 Q '99?

3 A No.

4 Q 2000?

5 A No.

6 Q Are you aware of the ordinary life statistics  
7 provided by CUNA Mutual Society for the year 1998?

8 A No.

9 Q '99?

10 A No.

11 Q 2000?

12 A No.

13 Q Are you aware of the number of policies issued in  
14 1998 for CUNA Mutual Insurance Society?

15 A No.

16 Q '99?

17 A No.

18 Q 2000?

19 A No.

20 Q Are you aware of the number of policies in force in  
21 1998, '99, or 2000?

22 A No.

23 Q Are you aware of the first year premiums collected  
24 for 1998 through 2000?

25 A No.

1 Q Are you aware of the general expense reserves for  
2 '98, '99, or 2000?

3 A No.

4 Q Are you aware of the return on reserves for '98, '99,  
5 or 2000?

6 A No.

7 Q Are you aware of new business issues in whole life  
8 for '98 through 2000?

9 A No.

10 Q Are you aware of, for '98 through 2000, term life  
11 business issues?

12 A No.

13 Q Credit life? Same question for credit life.

14 A No.

15 Q Group life?

16 A No.

17 Q The same question with respect to total insurance  
18 issued for CUNA Mutual Insurance Society on new  
19 business issued during '98, '99, or 2000.

20 A No.

21 Q With respect to insurance in force, are you aware of  
22 the statistical information from '98 through 2000 for  
23 whole life?

24 A No.

25 Q Term life?

1 A No.

2 Q Credit life?

3 A No.

4 Q Group life?

5 A No.

6 Q Or the total of any of those categories for insurance  
7 in force?

8 A No.

9 Q Are you aware of the total premiums collected on  
10 Tommy Bob Hall's policy?

11 A No.

12 Q Are you aware of the total premiums collected during  
13 a one-, five-, and ten-year period for CUNA Mutual on  
14 the same or similar policies issued to Tommy Bob  
15 Hall?

16 MR. KELLEY: Object to the form of the  
17 question.

18 By Mr. Pedersen:

19 Q I can break it down into years if you like. Are you  
20 aware of the total premiums collected by CUNA Mutual  
21 Insurance Society during the one-year period from '98  
22 for the same types of policies that were issued to  
23 Tommy Bob Hall?

24 MR. KELLEY: Are you talking about a  
25 home mortgage protection policy?

1 MR. PEDERSEN: Right.

2 A I am not aware of the exact number.

3 By Mr. Pedersen:

4 Q What about over a five-year period?

5 A Not -- again, not the exact number.

6 Q Are you aware of the amount of moneys or benefits  
7 paid out to Tommy Bob Hall?

8 A Not the exact amount.

9 Q Have you seen or researched -- well, let me break it  
10 down. Have you seen the documents that relate to the  
11 relationship between the Patriot Federal Credit Union  
12 in Chambersburg, Pennsylvania, and CUNA Mutual  
13 Insurance Society?

14 MR. KELLEY: Object to the form. You  
15 can answer.

16 A Yes.

17 By Mr. Pedersen:

18 Q Where is that document maintained?

19 A In our home office.

20 Q Here in Madison?

21 A In Madison.

22 Q When was the last time you reviewed that document?

23 A Prior to coming down here this morning.

24 Q This morning. You didn't bring that document with  
25 you today?

1 A No.

2 Q Did you know that it was one of the documents  
3 requested in a discovery request?

4 A No.

5 Q Have you seen the request for production of documents  
6 that plaintiffs sent?

7 MR. KELLEY: Which one?

8 By Mr. Pedersen:

9 Q The second request for production of documents.

10 A I don't know if I've seen the second.

11 Q Have you seen the first one?

12 A I did not pay attention to the order of them.

13 Q Without referring to number, have you seen a request  
14 for production of documents generated from the  
15 plaintiffs in this case?

16 A I don't know if I've seen the actual request.

17 Q What makes you think that you've seen some part of  
18 the information at least within the request?

19 A Because there were requests from the attorneys on our  
20 side to begin pulling together the information that  
21 you've asked for.

22 Q When did you first see that request?

23 A Rough, but about a week ago.

24 Q And you've located the, the document that sets forth  
25 the relationship between the Patriot Federal Credit



1 Union and CUNA Mutual Insurance Society?

2 A I located a copy of the policy under which Patriot  
3 Federal Credit Union is a member and that Mr. Hall  
4 enrolled on insurance for.

5 Q Can you describe that document for me?

6 A It is a group insurance policy.

7 Q Issued to Patriot Federal Credit Union?

8 A I'm not sure of that. I believe it was issued to a  
9 trust of which Patriot Federal Credit Union is a part  
10 of.

11 Q How long is the document?

12 A Maybe seven pages.

13 Q The CUNA entity on the document, is it CUNA Mutual  
14 Insurance Society?

15 A It should be. I didn't look at that part of the  
16 document.

17 Q How many contested claims have there been within CUNA  
18 Mutual home life insurance products over the last  
19 three years?

20 MR. KELLEY: Objection. Define the  
21 term contested.

22 By Mr. Pedersen:

23 Q Where a claim has been made and it's been denied by  
24 CUNA Mutual Insurance Society.

25 A I don't know the answer to that but it's not many.

1 Q You don't know how many?

2 A No.

3 Q Did you understand that plaintiffs have requested  
4 annual statements for '98 through 2001?

5 A I'm not sure if that was in the requested information  
6 of me.

7 MR. KELLEY: Just state what you know.

8 A I don't know if that was forwarded to me to deliver.

9 By Mr. Pedersen:

10 Q And do you have an understanding as to whether or not  
11 the judge, the federal judge in this case  
12 specifically ordered that those documents be provided  
13 in lieu of taking at least a partial deposition in  
14 this case?

15 A I was not aware of that.

16 MR. KELLEY: And they will be  
17 provided. By the way, they are public  
18 information on the website.

19 By Mr. Pedersen:

20 Q Are you aware of the profit and loss calculations for  
21 credit life for the years 1998?

22 A Can you ask that a different way?

23 Q Does CUNA Mutual maintain profits and loss  
24 calculations on each line, product line for each  
25 year?

1 A Pretax, pregovernance, yes.

2 Q And what were the profit and loss calculations pretax  
3 for CUNA Mutual Insurance Society's credit life for  
4 1998?

5 A I don't know that number.

6 Q For '99?

7 A I don't know that number.

8 Q For 2000?

9 A I don't know that number.

10 Q And for 2001?

11 A I don't know the exact number.

12 Q Does CUNA Mutual maintain statistics concerning  
13 internal profits and losses pretax with respect to  
14 home mortgage insurance?

15 MR. KELLEY: Define what you mean by  
16 home mortgage insurance, Steve.

17 MR. PEDERSEN: The home mortgage  
18 protection plan that's the plan that is the  
19 subject of this litigation.

20 MR. KELLEY: Okay.

21 A I believe that is a line item that's broken out, yes.

22 By Mr. Pedersen:

23 Q What were the profits and losses pretax for 1998 on  
24 that line of business?

25 A I don't have those with me.

1 Q Where are they?

2 A They're -- if they are available broken out, they are  
3 in the home office in Madison.

4 Q And this deposition is taking place in Madison.  
5 They're here locally; is that right?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes. Sorry.

9 Q Do you work in the Madison office?

10 A Yes.

11 Q Is that where you came from this morning before you  
12 came to your deposition today?

13 A Yes.

14 Q Same question, the profit and loss calculations for  
15 home mortgage protection credit insurance for 1999.  
16 Do you know that?

17 A Not the exact number.

18 Q For 2000?

19 A No.

20 Q For 2001?

21 A No.

22 Q What statistical data is available at CUNA Mutual  
23 Insurance Society with respect to home mortgage  
24 protection products?

25 MR. KELLEY: Object to the form. You

1 can answer it if you understand, Rich.

2 A I believe I understand it. There's, there's an array  
3 of information. The information available would  
4 include premium, claims paid, claim reserves, credit  
5 union fee income expense allocations. Other  
6 statistics that are available would include policies  
7 in force, group policies, certificates in force,  
8 certificates or applications, the number approved,  
9 declined, closed out, the number of revisions to  
10 certificates. I think that we would know the number  
11 of policies, sorry, not policies but claims paid and  
12 declined.

13 By Mr. Pedersen:

14 Q And I can go one by one. I'm sorry, were you done?

15 A There probably are a few other statistics that we  
16 will come across as we look at the different things  
17 in your request. Those are the ones that are off the  
18 top of my head.

19 Q The information that you just provided to us that's  
20 statistically available at CUNA Mutual Insurance  
21 Society, how is it available? In other words, what  
22 form is it in?

23 A Some of it is available electronically and some of it  
24 is in paper files.

25 Q When you say electronically, what do you mean? It's

1 on a computer? I don't want to put words in your  
2 mouth. What do you mean?

3 A On the computer or within our computer systems,  
4 either in images or in total summary level data.

5 Q Do you participate in any respect in preparing  
6 reports on any regular basis on any of the categories  
7 that you've described?

8 A I do not prepare the reports on that.

9 Q Do you review the reports?

10 A The reports are available for review when I need to.

11 Q How easily accessible are they?

12 A For some of the, the core pieces of information that  
13 are like premium and claims and credit union  
14 reimbursements, they're very accessible.

15 Q You say very. How long would it take you to pull  
16 them up to find them?

17 A I would walk over to the department and find the  
18 stack of papers where they are in.

19 Q So immediately available?

20 MR. KELLEY: That's not what he said.

21 Objection.

22 By Mr. Pedersen:

23 Q I don't want to put words in your mouth. How long  
24 would it take to get the core statistical  
25 information?

1 A To know premium and claims paid for a policy year, it  
2 would take a couple minutes.

3 Q And that could be in a printed out form? Or would it  
4 be in a printed out form or on a disk? What's the  
5 form that it would take?

6 A It's in a printed form.

7 Q Well, it's already printed?

8 A It's printed, yeah.

9 Q How often is that core statistical information  
10 printed out?

11 A Monthly. And that is premium and paid claims. It's  
12 all that report shows. Well, and number of  
13 certificates active I believe is on that report.

14 Q What specific statistical data, a specific number,  
15 have you come prepared here to address?

16 MR. KELLEY: Object to the form of the  
17 question.

18 A My understanding today was that I would come and  
19 answer your questions about home mortgage protection  
20 and our policies and practices. I was not of the  
21 impression that I needed to know the exact dollars of  
22 assets of CUNA Mutual Insurance Society in 1998.

23 By Mr. Pedersen:

24 Q Or '99?

25 A Or '99.

1 Q Or 2000?

2 A Or 2000.

3 Q Or any specific lines of business and their  
4 profitability or statistical data?

5 A Not in the way you've asked it. Not down to the  
6 level of detail that you've asked for today.

7 Q Is there a specific dollar number in any category  
8 that you've been prepared, not been prepared, that  
9 you have on the top of your head that you are able to  
10 discuss in the subject category of home mortgage  
11 protection?

12 MR. KELLEY: Object to the form. You  
13 can answer.

14 A Not down to the dollar in the way you seem to want it  
15 today.

16 MR. PEDERSEN: I would like to go off  
17 the record.

18 (Off the record discussion)

19 MR. KELLEY: Counsel have agreed that  
20 the deposition of Rich Fischer will continue  
21 here today to the extent that Mr. Fischer is  
22 able to respond to Mr. Pedersen's questions and  
23 that it will be then postponed until some later  
24 date prior to the close of discovery in this  
25 case in which such time Mr. Fischer will have



1 available the specific numbers regarding the  
2 following categories as they relate to home  
3 mortgage protection and credit life insurance.

4 And those categories are premiums  
5 paid, claims paid, claim reserves, credit union  
6 fee income, expense allocations, policies in  
7 force, group policies, certificates and  
8 applications, and the number of claims paid and  
9 declined and the number of rescissions. And  
10 that's to be over a certain period of time --  
11 off the record for a moment.

12 (Off the record discussion)

13 MR. KELLEY: And that certain period  
14 of time will be 1998 to present. CUNA Mutual  
15 will also make available an appropriate person  
16 to be determined who will be able to answer the  
17 same types of questions on the same types of  
18 categories of information that we have just  
19 described for individual life insurance policies  
20 either issued by or maintained by the CUNA  
21 Mutual Insurance Society as opposed to those  
22 individual life policies that are issued by or  
23 maintained by CUNA Mutual Life Insurance  
24 Company, which CUNA asserts is a separate  
25 company, not suggesting the plaintiff agrees or

1 disagrees with that. Does counsel for  
2 plaintiffs have anything to add or clarify?

3 MR. PEDERSEN: I believe there were  
4 two categories that were left out, the number of  
5 closed-out policies and claims and the number of  
6 revisions. And maybe I've misstated that.

7 MR. KELLEY: Let's go off the record  
8 for a moment.

9 (Off the record discussion)

10 MR. PEDERSEN: I'll clarify that the  
11 categories -- and I've gotten information from  
12 the deponent that the category of closed-out and  
13 revisions relate to applications and not claims  
14 but that the statistical information in those  
15 categories is available and we're requesting  
16 that information also. And I think we've agreed  
17 that that information will also be provided.

18 MR. KELLEY: Off the record for one  
19 moment.

20 (Off the record discussion)

21 MR. PEDERSEN: And again, off the  
22 record, when we were off the record we received  
23 information that the deponent is not certain how  
24 far back the statistical data goes for  
25 closed-out and revision of applications but that

1 he would provide information that was available  
2 and, of course, not provide the information that  
3 was not available.

4 MR. KELLEY: Okay.

5 MR. PEDERSEN: Additionally, we had  
6 requested information on profits and losses in  
7 those same lines of business. And I need to ask  
8 if the statistical data that we've discussed  
9 today includes profits and losses or only the  
10 gross figures.

11 MR. KELLEY: Let's go off the record.

12 (Off the record discussion)

13 MR. PEDERSEN: Let me just clarify  
14 again on the record. We've had a discussion off  
15 the record, and it appears that profits and  
16 losses under these lines of business, credit  
17 life, home mortgage protection and individual  
18 life can be derived but they are not readily  
19 available from the statistical data that we've  
20 just listed.

21 However, my understanding of the order  
22 is that we receive profit and loss information,  
23 and we're limiting it to those lines of  
24 business. And I believe the deponent has  
25 indicated that that information is obtainable

1 through either him or in conjunction with him  
2 and consulting with other individuals at CUNA  
3 Mutual or through another individual at CUNA  
4 Mutual being deposed in that area.

5 And we're satisfied to simply await  
6 for the appropriate designee from CUNA Mutual to  
7 address the profits and losses in those three  
8 lines of business for '98 through the present.  
9 Is that what we're agreeing to, Mike?

10 MR. KELLEY: Yes. And just to further  
11 clarify, the information in those categories  
12 that we discussed would provide profit and loss  
13 information but it would not be the, for lack of  
14 a better way of stating it, the net profits and  
15 losses; is that right, Rich?

16 THE WITNESS: Yes.

17 MR. KELLEY: But it would not be the  
18 net profit and loss figures, and we're going to  
19 work with the appropriate persons to get that  
20 net profit and loss figure for, again for home  
21 mortgage protection, credit life, and individual  
22 life of CUNA Mutual Insurance Society. Okay.

23 MR. PEDERSEN: We don't have our  
24 calendars here today, and I'm sure you don't  
25 know your calendar for the next two weeks.

1 MR. KELLEY: Next week is pretty busy  
2 but after that I know I'm okay.

3 MR. PEDERSEN: I know I have a trial  
4 scheduled. It may be at the very end of the  
5 month, but we'll work out a convenient date for  
6 both of us to come back out here to conduct that  
7 deposition or series of depositions.

8 MR. KELLEY: We'll get it done.

9 MR. PEDERSEN: And I think too we've  
10 agreed with some effort of professional courtesy  
11 to return here and each to bear our own expenses  
12 in returning to the depositions here in Madison?

13 MR. KELLEY: Yes.

14 By Mr. Pedersen:

15 Q With that, we'll continue with the deposition  
16 excluding specific statistical profit and loss  
17 questions and proceed with the, the corporate  
18 designation that I understand you've been presented  
19 here for your deposition with as the individual most  
20 knowledgeable with the home mortgage protection  
21 policies that are issued through CUNA Mutual  
22 Insurance Society; is that correct?

23 A Yes.

24 Q What is your position at CUNA Mutual Insurance  
25 Society?

**Stephen R. Pedersen, Esq.**

Attorney at Law

214 Senate Avenue, Suite 602 • Camp Hill, PA 17011  
Tel: (717) 763-1170 • Fax: (717) 763-1460

May 7, 2002

Michael R. Kelley, Esq.  
McNees Wallace & Nurick  
100 Pine Street  
P O Box 1166  
Harrisburg, PA 17108-1166

**Re: Nancy Hall vs. CUNA Mutual Group**

**Via fax ( #237-5300) and U. S. Mail**

Dear Mike:

I understand that your handwriting expert will be reviewing and examining original medical records on May 22, 2002 beginning at 10:00 a.m. I informed your office by telephone messages through my secretary, that either I or Ms. Mahady-Smith would be attending the examination of those documents. This letter is the confirmation that the examination will take place on May 22, 2002 beginning at 10:00 and that Plaintiff's counsel will attend. I will assume you will be there also and we can simply follow you from one doctor's office to the next as your handwriting expert reviews and evaluates the original medical records.

Pursuant to the Court Order, I await full and complete responses to Plaintiff's Second Request for Production of Documents #4 through #18. As noted on the Court Order and on the Discovery responses, you answered each of these questions by objecting that the question exceeded those agreed to in pre-discovery. The Court has overruled that objection and instructed you to answer each of those questions fully. I believe you have provided partial answers to many of the questions, but we await full and complete answers as instructed by the Court. Please let me know when you will have these answers available. I hope this can be provided to us within the next 10 days, or no later than May 22, 2002, so that your responses may be reviewed and analyzed prior to the date upon which my expert reports are due. If you have any difficulties getting these responses to me timely, please do not hesitate to call me.

Lastly, pursuant to the Court's original Scheduling Order, I was to initiate, within 4 weeks following the close of Discovery, a settlement conference and discussion between counsel. I spoke with your secretary to discuss setting up this conference, and we both mentioned that the conference would be most meaningful following the production of expert reports. Accordingly, I suggest an informal discussion on May 22, 2002 when we meet in person, in which we agree to

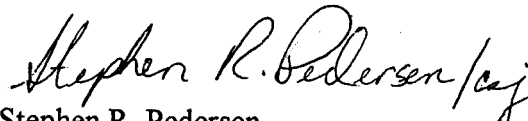
Michael R. Kelley, Esq.  
McNees Wallace & Nurick  
May 7, 2002  
Page two

**Re: Nancy Hall vs. CUNA Mutual Group**

hold a more formal discussion following the production of the expert reports. If you are agreeable, please let me know. Otherwise, pursuant to the original Court Order, I will try to schedule something earlier and in a more formal way.

Nothing in this letter, however, should be construed as an alteration in any way of my client's long-standing and continued request that the policy limits be immediately tendered. Previously, upon earlier requests, you indicated that your client wished to conclude the discovery process before considering making any such payments. I believe the evidence to be overwhelming that payment must be made and must be made promptly. Therefore, I once again request that the policy limits be immediately tendered. Your discovery responses indicate that CUNA Mutual does not now have nor has it ever possessed a pathology report which diagnoses cancer nor does it have any treatment records for cancer. Accordingly, CUNA Mutual should tender its policy limits while the remainder of this case is litigated. Please provide this continuing request immediately to your client.

Sincerely,

  
Stephen R. Pedersen

SRP/cj

cc: Catherine Mahady-Smith, Esq.

**Stephen R. Pedersen, Esq.**  
Attorney at Law

EXHIBIT E

214 Senate Avenue, Suite 602 • Camp Hill, PA 17011  
Tel: (717) 763-1170 • Fax: (717) 763-1460

September 12, 2002

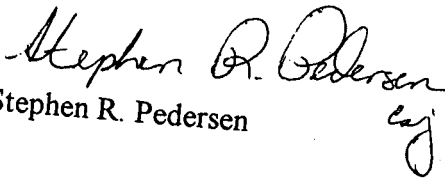
Michael R. Kelley, Esq.  
100 Pine Street  
P O Box 1166  
Harrisburg, PA 17108-1166

**Re: HALL vs. CUNA MUTUAL GROUP**

Dear Mike:

This letter is intended to address the outstanding documents which CUNA Mutual continues to refuse to produce despite a Court Order that production take place. I received your letter with all of its explanations, however, it does not provide justification for violating the Court Order which required that all of the documents be produced. I mentioned this to the Judge, as you may recall, in our last telephonic conference. The Judge, as you may recall, asked that I make a final effort to obtain these documents from you and to call his chambers if the documents were not produced. Accordingly, I am once again requesting full compliance with the Court Order that you produce all documents identified in Plaintiff's Second Request for Production of Documents, #3 through #18. If these documents are not produced by next Friday, we will have no choice but to make arrangements for a conference with the Judge in which you can explain your client's failure to comply with the Court Order.

Sincerely,

  
Stephen R. Pedersen

SRP/cj



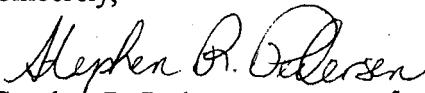
Charles Young  
McNees Wallace & Nurick  
September 18, 2002  
Page three

**Re: Hall vs. CUNA Mutual**

CUNA Mutual has simply provided the application sheet for this specific type of insurance. Plaintiffs are entitled, and the court has ordered, that Plaintiffs receive copies of all forms of individual insurance so comparisons can be made across the various forms.

As previously indicated, Plaintiffs await a full and complete response to all outstanding Requests for Production of Documents, as ordered by the court. Plaintiffs have requested that all of these documents be received by this Friday. If additional time is needed, please call me so that a mutually-convenient time can be arranged for the production of all documents requested. However, if you are simply refusing to produce those documents which you have been ordered to produce by the court, please let me know so that a court conference can be arranged.

Sincerely,

  
Stephen R. Pedersen

SRP/cj